

WETLAND ASSESSMENT

DIAMONDHEAD RANCH GOLF CLUB

Northwest ¼, Section 19, T10N, R5E
Lincoln, Lancaster County, Nebraska

Prepared For:

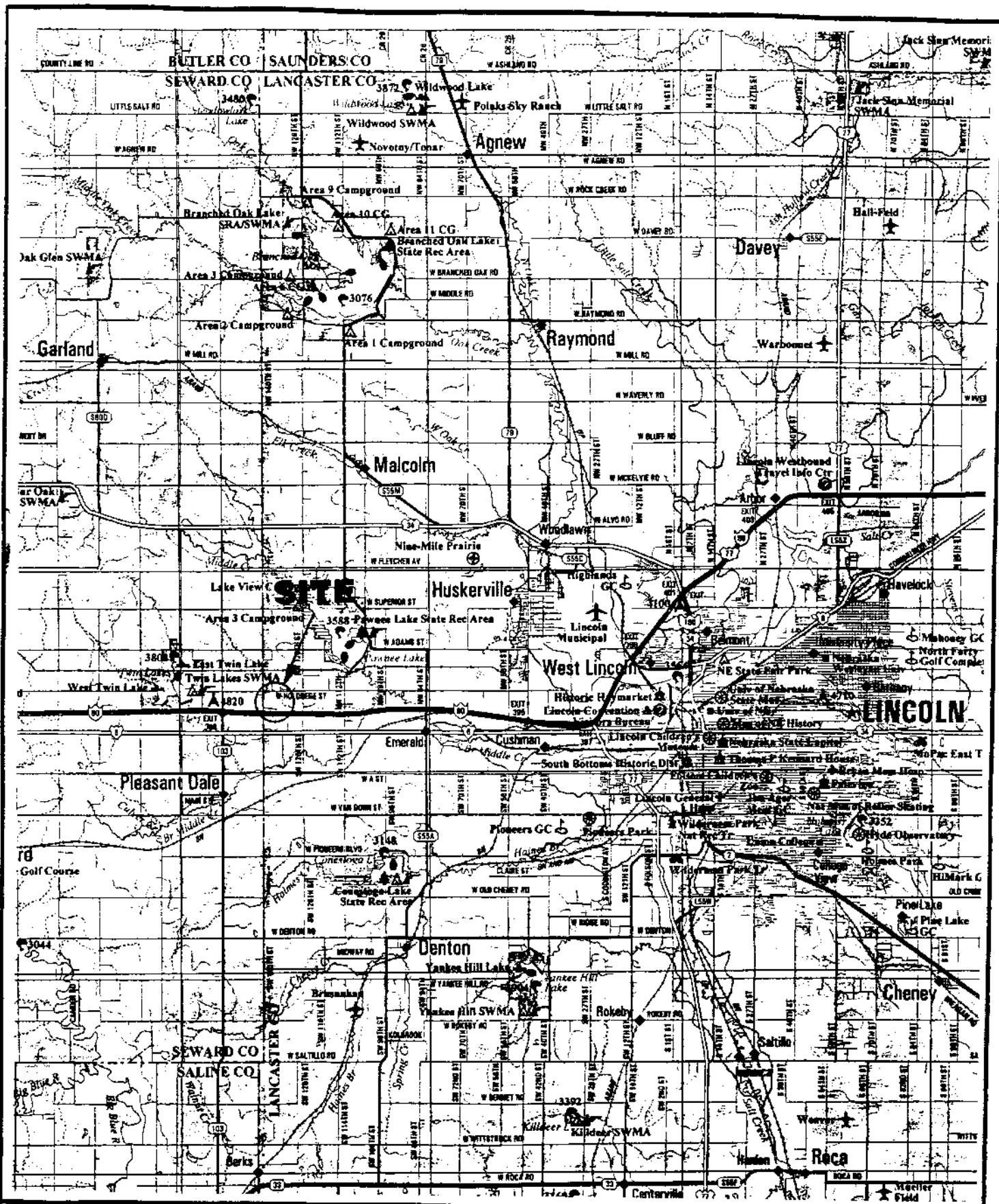
**Diamondhead Ranch, Inc.
900 N.W. 140th Street
Lincoln, Nebraska 68528**

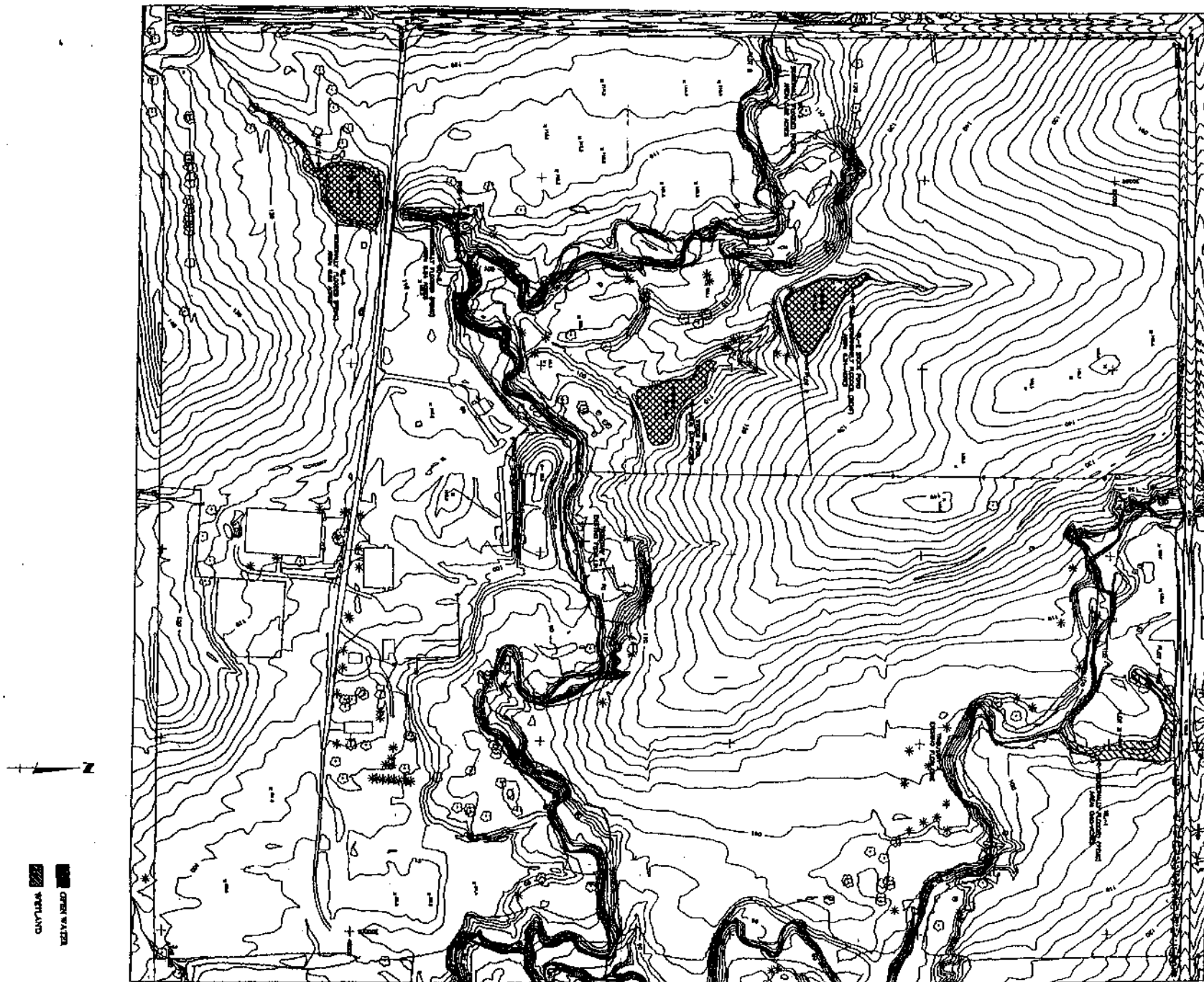
February 22, 1999

Prepared By:



**825 "J" Street
Lincoln, NE 68508**

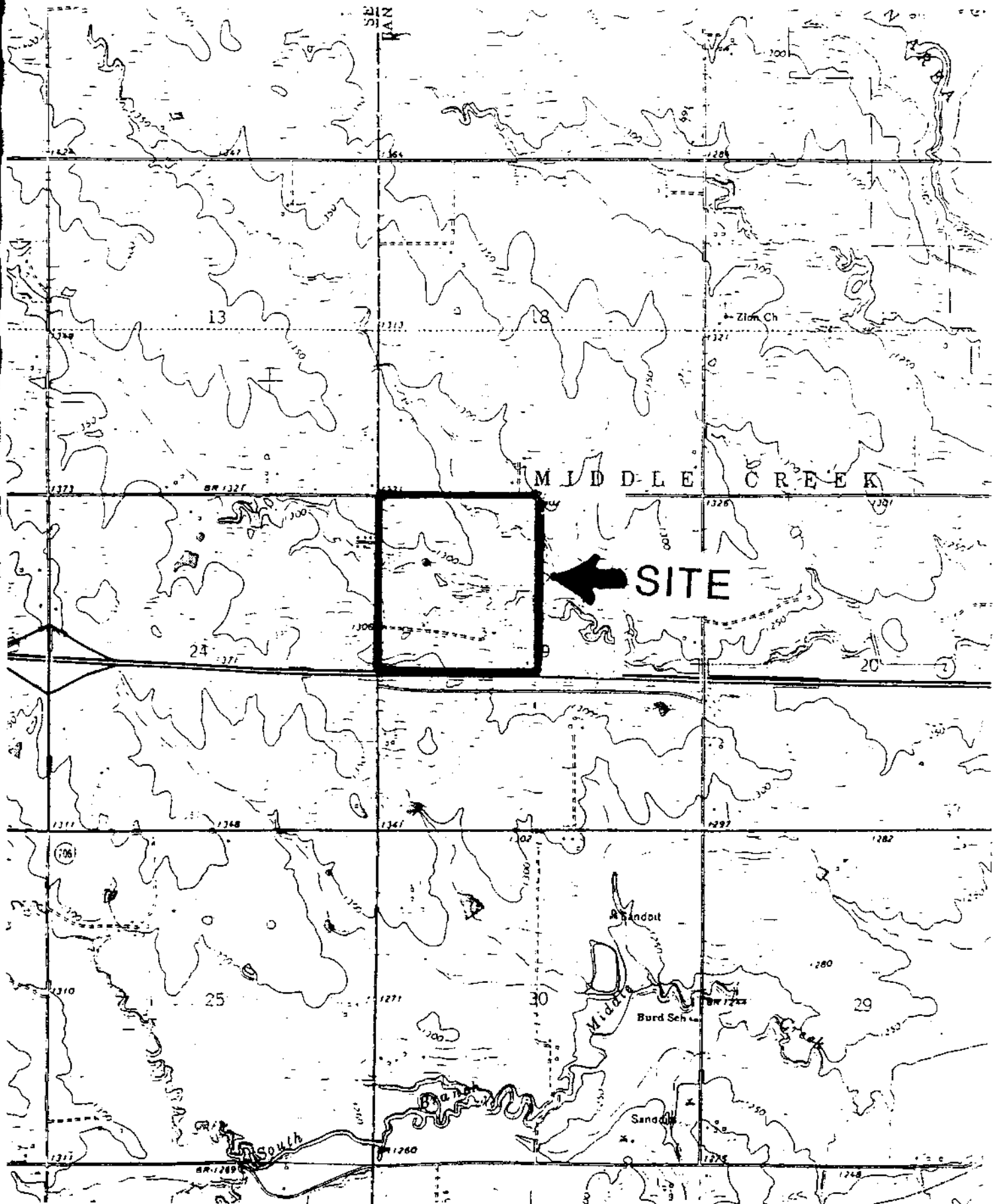




NW 1/4 19-10-5

Topographic Map - 1964 (Photorevised 1972)

No Scale

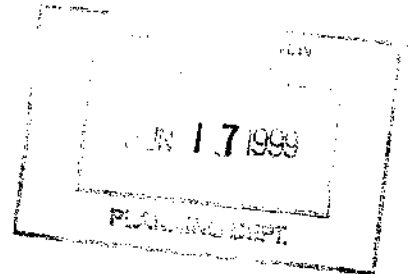


STRADER

BLUE VALLEY DRILLING

ROUTE 1 - BOX 89A
PICKRELL, NE 68422

MEMORANDUM



DATE: JUNE 16, 1997

TO: WHOM IT MAY CONCERN

FROM: ROGER STRADER

SUBJECT: WATER VOLUME OF WELL AT DIAMOND HEAD RANCH GOLF CLUB, LLC.

THE WATER VOLUME ON EXISTING WELL WAS TWELVE (12) GALLONS PER MINUTE.

Roger Strader

Lic. # 39022

LABORATORY REPORT

SEPTEMBER 16, 1998

Client: TRENT ANDERSON
DIAMOND HEAD RANCH
900 NW 140 ST
LINCOLN, NE 68528

Sample Collection Data:

Time Collected: 10:00 AM
Date Collected: 09-02-98
Sample Location: 900 NW 140 ST
Collected By: V. H. DREEZEN
Date Received: 09-02-98

If you have any questions concerning this report, call (402) 471-2122

Method Number	Analyte	Results	MCL	MDL	Units	Analysis Date	Lab Number
EPA 130.2	Total hardness	208	---	4	mg/L	09-14-98	158-7556
EPA 141.27	Total coliform	NT	0/100	0/100 mL	mL		
EPA 150.1	pH	7.7	---	---	mg/L	09-14-98	158-7556
EPA 160.3	Total dissolved solids	320	---	20	mg/L	09-14-98	158-7556
EPA 215.2	Calcium	64	---	2	mg/L	09-14-98	158-7556
EPA 220.1	Copper	NT	1300	100	µg/L		
EPA 236.1	Iron	<0.1	---	0.1	mg/L	09-14-98	158-7556
EPA 239.2	Lead	NT	15	1.0	µg/L		
EPA 243.1	Manganese	<0.05	---	0.05	mg/L	09-14-98	158-7556
EPA 273.1	Sodium	24	500	10	mg/L	09-14-98	158-7556
EPA 300.0A	Nitrate as N	1.0	10	0.1	mg/L	09-14-98	158-7556
EPA 310.1	Total alkalinity	237	---	4	mg/L	09-14-98	158-7556
EPA 325.2	Chloride	22	---	2	mg/L	09-14-98	158-7556
EPA 375.4	Sulfate	14	---	10	mg/L	09-14-98	158-7556
9214	Fluoride	0.43	4.0	0.2	mg/L	09-14-98	158-7556

NT: NOT TESTED

LTMDL: LESS THAN METHOD DETECTED

NOT TESTED BECAUSE OF:

- ☐ INSUFFICIENT AMOUNT ☐ DAMAGE ☐ IMPROPER CONTAINER
☐ NITRATE AND BACTERIOLOGICAL PURITY COMBINATION TEST

TEST(S) BY: [Signature]

LABORATORY SERVICES
3701 SOUTH 14TH STREET, LINCOLN, NEBRASKA 68502 PHONE (402) 471-2122

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

PRINTED WITH SOY INK ON RECYCLED PAPER

LO-41

MAY - 1 2001

LABORATORY SERVICES
3701 SOUTH 14TH STREET
LINCOLN, NEBRASKA 68502

LABORATORY REPORT

SEPTEMBER 16, 1998

Client: TRENT ANDERSON
DIAMOND HEAD RANCH
900 NW 140TH ST
LINCOLN, NE 68528

Sample Collection Data:

Time Collected: 10:15 AM
Date Collected: 09-02-98
Sample Location: IRR WELL 900 NW 140 ST
Collected By: V. H. DREESZEN
Date Received: 09-02-98

If you have any questions concerning this report, call (402) 471-2122

Method Number	Analyte	Results	MCL	MDL	Units	Analysis Date	Lab Number
EPA 130.2	Total hardness	208	---	4	mg/L	09-14-98	158-7555
EPA 141.27	Total coliform	NT	0/100	0/100 mL	mL		
EPA 150.1	pH	7.4	---	---	mg/L	09-14-98	158-7555
EPA 160.3	Total dissolved solids	322	---	20	mg/L	09-14-98	158-7555
EPA 215.2	Calcium	64	---	2	mg/L	09-14-98	158-7555
EPA 220.1	Copper	NT	1300	100	µg/L		
EPA 236.1	Iron	<0.1	---	0.1	mg/L	09-14-98	158-7555
EPA 239.2	Lead	NT	15	1.0	µg/L		
EPA 243.1	Manganese	<0.05	---	0.05	mg/L	09-14-98	158-7555
EPA 273.1	Sodium	22	500	10	mg/L	09-14-98	158-7555
EPA 300.0A	Nitrate as N	1.5	10	0.1	mg/L	09-14-98	158-7555
EPA 310.1	Total alkalinity	202	---	4	mg/L	09-14-98	158-7555
EPA 325.2	Chloride	18	---	2	mg/L	09-14-98	158-7555
EPA 375.4	Sulfate	25	---	10	mg/L	09-14-98	158-7555
9214	Fluoride	0.41	4.0	0.2	mg/L	09-14-98	158-7555

NT: NOT TESTED

LTMDL: LESS THAN METHOD DETECTED

NOT TESTED BECAUSE OF:

☐ TEST NOT REQUESTED

☐ INSUFFICIENT AMOUNT

☐ DAMAGE

☐ IMPROPER CONTAINER

☐ NITRATE AND BACTERIOLOGICAL PURITY COMBINATION TEST

TEST(S) BY: *[Signature]*

LABORATORY SERVICES
3701 SOUTH 14TH STREET, LINCOLN, NEBRASKA 68502 PHONE (402) 471-2122

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER
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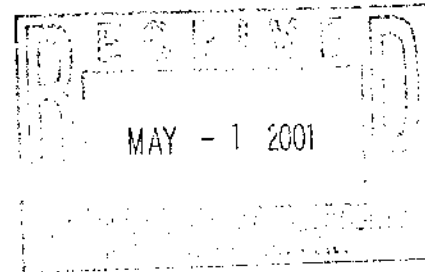
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102-4978

REPLY TO
ATTENTION OF

May 24, 1999

Nebraska Regulatory Office - Wehrspann
8901 South 154th Street, Suite 1
Omaha, Nebraska 68138-3621

Mr. Trent P. Anderson
Diamond Head Ranch Golf Club, LLC
900 N.W. 140th Street
Lincoln, NE 68528



Dear Mr. Anderson:

Reference your Section 404 application requesting Department of the Army authorization to place fill in **0.087 acre** of headwaters to construct 4 dams (1 dam is 0.06 acre and 3 check dams at 0.009 acre each). This work will be performed in conjunction with construction of a golf course. The project is located in the Northwest 1/4 of Section 19, Township 10 North, Range 5 East, Lancaster County, Nebraska. Based on the information provided, **it has been determined that the proposed activity is authorized by Nationwide Permit 26, found in the December 13, 1996 Federal Register: Final Notice of Reissuance and Modification of Nationwide Permits (61 FR 65874).**

This authorization is valid under the following condition(s):

In cases of fill into special aquatic sites (including wetlands), losses of such special aquatic sites shall be mitigated by restoring or creating equivalent replacement habitat either on-site or at a suitable off-site location at a minimum ratio of 1.5 acres of restored or created habitat for every 1.0 acre of affected area or by utilizing mitigation from an acceptable and established wetland mitigation bank. Temporary fills in special aquatic sites authorized under this nationwide permit shall not require mitigation, but shall be removed in their entirety with the affected areas returned to their preexisting elevation. **In the case of this project, the headwaters impacts will be 0.087 acre and mitigation is not required. However, you are voluntarily creating two ponds (2.08 and 2.04 acres) and a 0.413 acre wetland right next to the existing wetland.**

Enclosed is a fact sheet which describes this nationwide permit, the general conditions and/or Section 404 conditions, which must be adhered to for this authorization to remain valid. Any deviations to the original plans and specifications of your project could require additional authorization from this office. This authorization does not eliminate the need to obtain other applicable federal, tribal, state or local permits.

This verification is valid until Nationwide (NWP) 26 permit expires or for two years, whichever comes first. NWP 26 is currently scheduled to expire on September 15, 1999, as announced in the October 14, 1998, issue of the Federal Register (63FR55095 - 55099).

In compliance with General Condition 14, the attached compliance certification form must be signed and returned to this office upon completion of the authorized work and any required mitigation.

Should you, at any time, become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

In addition, you are responsible for all work accomplished in accordance with the terms and conditions of the nationwide permit. If a contractor or other authorized representative will be performing the work authorized by the nationwide permit on your behalf, we strongly recommend that they be provided a copy of this letter and the attached conditions so they are aware of the limitations of this permit. Project activities which fail to comply with the terms and conditions of this permit will be considered unauthorized and subject to appropriate enforcement actions.

If you have any questions concerning this authorization, please contact Ms. Louetta Amell at the Regulatory Office address shown above or telephone (402) 896-6059 and reference file number NE 1998-10373.

Sincerely,



Michael Rabbe
Nebraska State Program Manager

Enclosure

CF: W/O Encl. NEDEQ (Bender)

NRCS - Lincoln Field Office



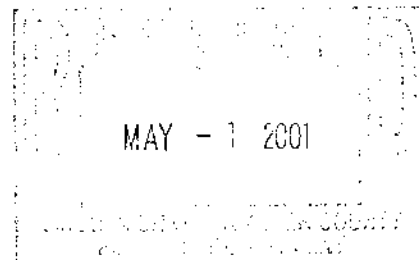
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE-WEHRSPANN
8901 SOUTH 154TH STREET, SUITE 1
OMAHA, NEBRASKA 68138-3621

REPLY TO
ATTENTION OF:

Wehrspann Regulatory Office

November 17, 2000

Mr. Trent P. Anderson
Diamond Head Ranch Golf Club, LLC
900 N.W. 140th Street
Lincoln, Nebraska 68528



Dear Mr. Anderson:

We have reviewed your request for Department of the Army authorization to place fill in 0.087 acre of headwaters to construct 4 dams (1 dam is 0.06 acre and 3 check dams at 0.009 acre each). This work will be performed in conjunction with construction of a golf course. The project is located in the Northwest ¼ of Section 19, Township 10 North, Range 5 East, Lancaster County, Nebraska.

Based on the information you provided, this office has determined that your work is authorized by the Department of the Army **Nationwide Permit No. 39**, found in the March 9, 2000 Federal Register, Final Notice of Issuance and Modification of Nationwide Permits (65 FR 12818). Enclosed is a fact sheet that fully describes this nationwide permit and lists the General Conditions that must be adhered to for this authorization to remain valid.

This authorization is valid under the following condition(s):

- a. A floodplain permit will be obtained from the Lancaster County floodplain administrator prior to construction. The project will be constructed in accordance with the terms and conditions of the floodplain permit.*
- b. In cases of fill into special aquatic sites (including wetlands), losses of such special aquatic sites shall be mitigated by restoring or creating equivalent replacement habitat either on-site or at a suitable off-site location at a minimum ratio of 1.5 acres of restored or created habitat for every 1.0 acre of affected area or by utilizing mitigation from an acceptable and established wetland mitigation bank. Temporary fills in special aquatic sites authorized under this nationwide permit shall not require mitigation, but shall be removed in their entirety with the affected areas returned to their preexisting elevation. In the case of this project, the headwaters impacts will be 0.087 acre and mitigation is not required. However, you are voluntarily creating two ponds (2.08 and 2.04 acres) and a 0.413 acre wetland right next to the existing wetland.*

Although an individual Department of the Army permit will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal or local permits as required. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are responsible for all work accomplished in accordance with the terms and conditions of the nationwide permit. If a contractor or other authorized representative will be accomplishing the work authorized by the nationwide permit in your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable nationwide permit. Any activity that fails to comply with all of the terms and conditions of the nationwide permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 14, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

This verification will be valid until **November 17, 2002**.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

If you have any questions concerning this determination, please feel free to contact this office at (402) 896-0723 and reference Nationwide Permit No. **NE 2000-11191**.

Sincerely,

A handwritten signature in cursive script, reading "Pamela K. Liddick".

Pamela K. Liddick
Project Manager

Copy Furnished:

NE DEQ (Bender)
NRCS – Lincoln Field Office
Lancaster Floodplain Administrator

**PHASE I
ENVIRONMENTAL SITE ASSESSMENT
DIAMOND HEAD RANCH PROPERTY
160 ACRES IN SECTION 19, T10N, R5E
LANCASTER COUNTY, NEBRASKA**

HWS Project No. 72-48-3175.0000

August 12, 1998

Prepared by:



Consulting Group Inc.
825 J Street, P.O. Box 80358
Lincoln, NE 68501-0358
402/479-2200 • FAX 402/479-2276

1.0 SUMMARY

HWS Consulting Group Inc. (HWS) has performed a Phase I Environmental Site Assessment (ESA) in conformance with the scope and limitations of ASTM Practice E 1527-97 on the Diamond Head Ranch Property, 160 Acres located in Section 19, Township 10 North, Range 5 East, Lancaster County, Nebraska (the "Property"). This assessment has revealed no evidence of recognized environmental conditions in connection with the Property.

For the purposes of this assessment, the term "recognized environmental condition" shall mean the presence or likely presence of any hazardous materials or petroleum products on the property under conditions that indicate an existing release, a past release, or a material release of any hazardous materials into structures on the Property or into the ground, groundwater, or surface water of the Property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include *de minimus* conditions that generally would not be subject to an enforcement action if brought to the attention of the appropriate governmental agencies.

7.0 CONCLUSIONS

HWS Consulting Group Inc. (HWS) has performed a Phase I Environmental Site Assessment (ESA) in conformance with the scope and limitations of ASTM Practice E 1527-97 on the Diamond Head Ranch Property, 160 Acres located in Section 19, Township 10 North, Range 5 East, Lancaster County, Nebraska (the "Property"). This assessment has revealed no evidence of recognized environmental conditions in connection with the Property.

For the purposes of this assessment, the term "recognized environmental condition" shall mean the presence or likely presence of any hazardous materials or petroleum products on the property under conditions that indicate an existing release, a past release, or a material release of any hazardous materials into structures on the Property or into the ground, groundwater, or surface water of the Property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include *de minimus* conditions that generally would not be subject to an enforcement action if brought to the attention of the appropriate governmental agencies.

STATE OF NEBRASKA

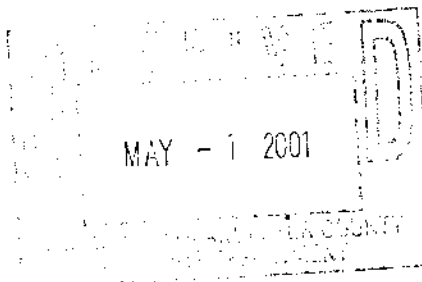
DEPARTMENT OF WATER RESOURCES

In the Matter of Application C-33)
For a Permit to Conduct Water)
From a Ground Water Well in a)
Tributary to Middle Creek for)
Irrigation.)
Water Division 2-B.)

ORDER

The above-captioned matter came on for hearing before the Department of Water Resources (hereinafter "Department") on April 13, 2000. The Director being fully advised in the matter FINDS:

1. On October 26, 1999, Trent P. Anderson, Diamond Head Ranch Golf Club, LLC (hereinafter "Applicant") filed application C-33 for a permit to conduct water from a ground water well (registration No. G-101882) in a tributary to Middle Creek for irrigation.
2. The Department has jurisdiction over applications for permits to conduct ground water in natural streams pursuant to §§ 46-209, 46-210, 46-252, and the Administrative Procedures Act, §§ 84-901 through 84-919, R.R.S., 1943, as amended.
3. On November 18, 1999, pursuant to the Nebraska Nongame and Endangered Species Conservation Act, § 37-801, the Department notified the Nebraska Game and Parks Commission of application C-33. On November 29, 1999, the Department received written notice from the Nebraska Game and Parks Commission that granting application C-33 would have "no effect" on any state-listed threatened or endangered species or their habitats. See Department files.
4. The Department caused notice ("Notice") of application C-33 to be published in accordance with all state laws. That Notice stated, "Any interested person wanting to object to the granting of this application or wanting to request a hearing shall file a formal objection/request with the Department . . . by January 7, 2000." See Notice.



5. In response to the published notice of application C-33, fifteen (15) objections were filed between January 4, 2000, and January 10, 2000, by persons who owned property and/or resided near the Applicant's property. Persons who filed objections on or before January 7, 2000, (hereinafter "Objectors") are as follows: Randy and Rhonda Page, Leander Bruner, Kevin and Julia Lostroh, Larry and Teri Minzel, Richard H. and Roxanna V. Pickel, Edna Whitney, Terry and Carol Klug, Melvin and Joanne Lostroh, Richard Hedges, Karen Spath, Paul C. Jacoby, Herman and Blanche Jacoby, and Merle Jahde. Shane A. and Deborah L. DeBaet's filing was mailed on the 7th but received on the 10th. All other persons who filed objections or otherwise attempted to join the proceeding as a party did so after January 7, 2000.
6. On February 22, 2000, Donald G. Blankenau of Kutak Rock, LLP was appointed by the Department as Hearing Officer in this matter.
7. On February 22, 2000, the Hearing Officer entered a Preliminary Order and Notice of Prehearing Conference (hereinafter "Prehearing Order"). Copies of the Prehearing Order were sent to the Applicant and all Objectors via first class U.S. Mail, postage prepaid on or about February 23, 2000.
8. Pursuant to the Prehearing Order, a prehearing conference was held on March 14, 2000, at the time and place specified in the Prehearing Order. At the prehearing conference, Mr. Mark A. Hunzeker, Esq. of Pierson, Fitchett, Hunzeker, Blake & Katt, appeared on behalf of Mr. Merle Jahde. Mr. Hunzeker indicated that he would also be representing certain other persons in opposition to application C-33. The Hearing Officer directed Mr. Hunzeker to enter a formal written appearance specifying the parties he represents in this matter. Following a discussion of the process to be followed in this matter, a hearing date of April 13, 2000, was established for final hearing in this matter. The Department subsequently provided written notification to all parties of record of the date, time and location for the final hearing.
9. On March 22, 2000, Mr. Hunzeker, through written filing with the Department, entered his appearance on behalf of numerous persons in opposition to application C-33. Of those persons on behalf of whom Mr. Hunzeker entered his appearance, only the following persons had filed a formal objection/request on or before January 7, 2000: Merle Jahde, Richard D. Hedges, Terry and Carol Klug, Kevin and Julia Lostroh, Leander Bruner, Melvin and Joanne Lohstroh, Larry and Teri Minzel, Randy and Rhonda Page, Richard H. and Roxanna V. Pickel, and Edna Whitney.
10. On March 27, 2000, Mr. Stephen D. Mossman, Esq., of Mattson, Ricketts, Davies, Stewart & Calkins entered his appearance on behalf of the Applicant.

11. On April 3, 2000, Mr. Mossman filed a Motion in Limine, Motion to Strike, and Request for Hearing with the Department. Due to scheduling difficulties, those matters were addressed at the final hearing.
12. The final hearing was convened pursuant to notice at 9:00 a.m., April 13, 2000, at the Liquor Control Commission Conference Room, Fifth Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. Present at that hearing were Mr. Mossman on behalf of the Applicant and Mr. Hunzeker on behalf of certain Objectors. No unrepresented Objectors or unrepresented parties appeared.
13. At the final hearing, Mr. Hunzeker stipulated and agreed that all persons who had not filed an objection/request on or before January 7, 2000, be stricken as a party to this proceeding as requested by the Motion to Strike filed by Mr. Mossman. See Transcript at 2. The Hearing Officer thereby granted the Motion to Strike and dismissed all parties who failed to file an objection/request with the Department on or before January 7, 2000. See Transcript at 2. Mr. Hunzeker also sought leave to withdraw as counsel for Randy and Rhonda Page. See Transcript at 2. Randy and Rhonda Page had objected to application C-33 in a timely fashion but did not attend the final hearing. The Hearing Officer permitted Mr. Hunzeker to withdraw as counsel for Randy and Rhonda Page. Mr. Hunzeker did not oppose the Motion in Limine or the request for the rules of evidence. See Transcript at 3. The Hearing Officer thereby granted the Motion in Limine and request of the application of the rules of evidence. See Transcript at 3.
14. The Hearing Officer took judicial notice of all documents contained in the Department's files on this matter. See Transcript at 5.
15. At the final hearing, Mr. Trent Anderson, President of Diamond Head Ranch Golf Club, LLC, testified as to how he believed irrigation water would be delivered to certain ponds depicted in Exhibit 1. Under direct examination, Mr. Anderson explained that an irrigation well would pump a maximum of 138 acre-feet of water annually during the course of the growing season. As this ground water is pumped from the ground, it will be deposited into an off-channel pond. From the off-channel pond, the water would be metered and pumped into the stream channel. The water would then flow downstream where it would be metered and diverted into small ponds. From those small ponds, the water would again be withdrawn and used for irrigation. See Transcript at 12-15.

Under examination by the Hearing Officer, Mr. Anderson testified that the Applicant owned the property where the well is located, the holding ponds and the length of the stream channel within which the water would be conducted. See Transcript 15-17. Mr. Anderson further testified that the Applicant owned or would acquire all property on which

the ground water would be used. See Transcript at 18-19. Anderson also testified that the nearest neighboring well was located approximately 3,000 feet from the Applicant's well. See Transcript at 19.

16. At the final hearing, Mr. Stephen H. Nickel of Nickel Engineering, Inc., testified that he had done much of the engineering work associated with the plan to conduct water in a channel for the Applicant. Mr. Nickel testified that approximately eight cubic feet of water from every acre-foot transported will be lost to evaporation and seepage. See Transcript at 32 and Exhibit 8. Mr. Nickel further testified that the Applicant's well may be located within 50 feet of the banks of the tributary to Middle Creek.
17. From the records of the Department, there are no surface water users located on the tributary to the Middle Creek.
18. The Objectors did not present any testimony or evidence at the final hearing.

It is therefore CONCLUDED:

1. The facts show the well, ponds, stream segment within which the water will be transported, and location of water use are all within the borders of a contiguous tract of property owned by the Applicant. Under Nebraska common law, a property owner has a right to make beneficial consumptive use of ground water under their property anywhere on the overlying surface tract. Applied to the present situation, the Applicant would not need a permit to use the ground water if it were conveyed through a pipe rather than a stream channel. The conveyance of water in a natural stream channel, however, cannot be accomplished without a permit from the Department.¹
2. Nebraska law sets minimal standards that the Department must consider before granting a permit to conduct water in a natural stream. In this case, those standards are simply, (a) that no state-listed, threatened or endangered species or their habitats will be harmed by granting the permit, (b) that the water be used for a beneficial purpose, and (c) that granting the permit is not contrary to the public interest.

As indicated by a letter from the Nebraska Game and Parks Commission, granting application C-33 will not harm any state-listed, threatened and endangered species or their habitats. The Objectors did not present any evidence to contradict or dispute the conclusion of the Nebraska Game and Parks Commission.

¹ Diverting water from a natural stream without state authorization is a criminal offense in Nebraska. A permit to conduct water in a stream channel serves to protect those persons conducting water from criminal prosecution and aids in the orderly distribution of surface water supplies.

As to whether granting the permit is contrary to the public interest, the Applicant or the Objectors presented virtually no evidence. Historically, however, the Nebraska Supreme Court has recognized a wide variety of water uses as being "beneficial and not contrary to the public interest." The Department also has traditionally recognized virtually any legally permitted commercial activity requiring water consumption, that did not adversely impact the property interests of others, to be beneficial and not contrary to the public interest.

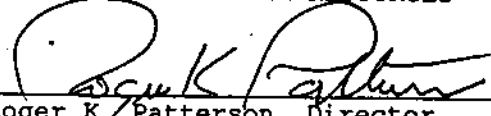
While it can be fairly argued that irrigating a golf course is not a beneficial use of water and is contrary to the public interest, in 1993 the Nebraska Legislature adopted changes to the Industrial Ground Water Transfers Act, §§ 46-675 to 46-690, that specifically recognized golf course irrigation as a permissible commercial use. Section 46-677 states, in pertinent part, "[C]ommercial use shall include, but not be limited to, maintenance of the turf of a golf course." It would seem, therefore, that unless the property rights of the Objectors would be adversely impacted by the transportation of ground water and its subsequent consumption through irrigation, the proposed use is beneficial and in the public interest. The Objectors did not present any evidence or testimony that indicates their property interests would be adversely impacted. Indeed, testimony from Mr. Anderson and the Department's own records suggest that there are no surface water right holders in the area and the nearest ground water well is approximately 3,000 feet from the Applicant's well. Given the narrow scope of the permit and the absence of any evidence of a clear threat, it cannot be concluded that the property interests of the Objectors would be impacted.

The Objectors, however, argue that there can be no beneficial use of water in this instance because the Applicant did not receive the required permits from the Lancaster County Board to construct the golf course. Mr. Hunzeker succinctly stated, "So, until there is a beneficial use, it seems to me there can be no permit to transmit water in the stream and therefore the permit should be denied." See Transcript at 46. This position is mistaken. The Applicant must receive a permit before making beneficial use of the water as contemplated. Nebraska law does not require an applicant to obtain all state, federal or local permits before the Department can issue a permit. Indeed the Department often issues permits for planned projects before an applicant receives all necessary permits from other authorities. What application C-33 contemplates is a beneficial use of water provided the project can be developed in compliance with all other applicable state, federal and local laws. If the project cannot be developed because of other applicable laws, the permit from the Department will be meaningless and will be canceled after three years of nonuse.

It is therefore ORDERED that application C-33 is APPROVED, conditioned as follows:

1. The Applicant may conduct a maximum of 138 acre-feet of ground water annually into a tributary of Middle Creek and withdraw that water, less 1,104 cubic feet annually for transportation losses, as set forth in application C-33 and Exhibits 1 and 15.
2. The Applicant shall install meters of a type and at locations specified by the Department to determine the amount of water pumped into and withdrawn from the tributary of Middle Creek.
3. The Department shall have access to the Applicant's well, ponds and stream segment at all reasonable times to determine compliance with this Order.
4. The Applicant shall, as requested by the Department, provide the Department with any and all water pumping, conveyance and use data.
5. Failure by the Applicant to conduct ground water in the manner set forth in application C-33 and indicated by Exhibits 1 and 15 and within three years from the date of this Order, or for any period of three consecutive years thereafter, will result in the cancellation of this permit.
6. Applicant shall comply with § 46-678.01 if a transfer occurs.

DEPARTMENT OF WATER RESOURCES


Roger K. Patterson, Director

May 22, 2000

Copies of this Order were mailed on May 22, 2000, to:

Steve Mossman, Attorney
233 S. 13th St. Ste. 1401
Lincoln, NE 68508

Herman and Blanche Jacoby
11405 West O Street
Lincoln, NE 68528

Mark A. Hunzeker, Attorney
Pierson, Fitchett, Hunzeker,
Blake & Katt
P.O. Box 95109
Lincoln, NE 68509

Paul C. Jacoby
13200 West O Street
Lincoln, NE 68528

Shane and Deborah DeBaets
11900 W. Wendy Lane
Lincoln, NE 68528

Randy and Rhonda Page
1011 NW 140th Street
Lincoln, NE 68528

David Glantz
12200 W. Wendy Lane
Lincoln, NE 68528

Karen Spath
13210 West O Street
Lincoln, NE 68528

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matters of Applications A-17823)
and A-17824 for Permits to Impound)
Water; Application A-17825 for a)
Permit to Appropriate Water for)
Irrigation; and Applications A-17826)
and A-17827 for Permits to Appropriate)
Impounded Water For Irrigation.)
Water Division 2-B.)

ORDER OF APPROVAL

These matters came on before the Director of the Department of Natural Resources. The Director FINDS:

1. On March 16, 2000, the Diamond Head Ranch Golf Club LLC filed applications A-17823 through A-17827 and corresponding map numbers 15797 through 15801. Corrected applications and maps were later filed. These applications all request permits sited in Township 10 North, Range 5 East in Lancaster County, Nebraska, and are described below:

Application And Map No.	Description
A-17823 P-15797	Application to impound up to 112.4 acre-feet (AF) of water (7.2 AF of storage in the dead pool plus 7.5 AF of useable storage times 14.03 fills) from a tributary to the South Branch of Middle Creek in Diamond Head Ranch Upper Reservoir located in the S½NW¼ of Section 19.
A-17824 P-15798	Application to impound up to 106.2 AF of water (1 AF of storage in the dead pool plus 13.2 AF of useable storage times 7.97 fills) from a tributary to the South Branch of Middle Creek in Diamond Head Ranch Lower Reservoir located in the SE½NW¼ of Section 19.
A-17825 15799	Application to divert up to 1.4 cubic feet per second (cfs) of water from a tributary to the South Branch of Middle Creek at a point in the SE½NW¼ of Section 19 to irrigate 98 acres located in the NW¼ of Section 19 and the W½SE¼ of Section 18.
A-17826 15800	Application to use up to 105.2 AF of water stored in the Diamond Head Ranch Upper Reservoir from the same pumpsite and to irrigate the same 98 acres described under A-17825.
A-17827 15801	Application to use up to 105.2 AF of water stored in the Diamond Head Ranch Lower Reservoir from the same pumpsite and to irrigate the same 98 acres described under A-17825.

MAY - 2001

Only one diversion point is proposed for applications A-17825, A-17826 and A-17827---on the north bank of the Diamond Head Ranch Lower Reservoir.

In the supporting materials filed with the applications, the Applicant indicates that 105.2 AF is the total annual volume of water necessary to supply the golf course. Storage of water under A-17823 and A-17824 would be generated from runoff, snowmelt and rainfall events. The natural flow and storage use applications filed reflect an intention to utilize water in such a manner as to increase operational flexibility.

The Applicant also has a permit to conduct water through a stream channel, C-33, the source of which is a ground water well.

2. Plan numbers P-15797 for application A-17823 and P-15798 for application A-17824 and associated specifications were examined by a Registered Professional Engineer of the Department. Map numbers 15799, 15800, and 15801 for applications A-17825, A-17826 and A-17827, respectively, were also examined by Department staff. The plans and all the maps were found to be consistent with current standards and Department rules and regulations.
3. The Nebraska Game and Parks Commission was consulted regarding the impact of approval of applications A-17823 through A-17827 on threatened and endangered species as provided by § 37-807, R.R.S., 1943, as amended. The Commission issued a nonjeopardy opinion.
4. On October 31, 2000, notice of these applications were sent to a list of people residing in the immediate area of the project sites who had expressed an interest in receiving such notice. On November 13, Terry and Carol Klug filed an objection to the granting of A-17823 through A-17827. On December 8, the Klugs requested that their Objection to the applications be withdrawn.

It is CONCLUDED:

1. Based on Finding No. 2, Plan numbers P-15797 and P-15798 and map numbers 15799, 15800 and 15801 should be approved.
2. Based on Finding No. 3, it is determined that approval of applications A-17823 through A-17827 will not adversely impact any threatened or endangered species or their habitat.
3. Based on Finding No. 4, the Klugs' Objection should be dismissed.

4. Based on the first two paragraphs found on page two under Finding No. 1, any useable storage water diverted under A-17826 and A-17827 could be limited to a combined maximum volume of 105.2 AF and still allow the Applicant enough flexibility to operate the golf course. Application A-17825 requests the maximum rate of natural flow allowed by law. By limiting this application to a total annual volume of 105.2 AF, the applicant could utilize the applications individually or all three in conjunction with one another.

Department records indicate that at times sufficient water exists in this watershed to approve these applications. However, it also appears that water administration may occur in this area due to senior, downstream appropriations, and A-17823 through A-17827 could be denied water during the irrigation season based on priority dates. The Applicant should take this into consideration before making any investment in the proposed project.

It is therefore ORDERED:

1. The Objection filed by Terry and Carol Klug is DISMISSED.
2. Application A-17823 and plan number P-15797 are hereby APPROVED subject to the following limitations, conditions and notice:
 - a. The source of water is a tributary to the South Branch of Middle Creek.
 - b. The priority date is March 16, 2000.
 - c. The capacity of Diamond Head Ranch Upper Reservoir is 14.7 AF. The amount of this appropriation shall include a one-time filling of the dead pool in the amount of 7.2 AF, plus multiple fills not to exceed 105.2 AF per annum. Diamond Head Ranch Upper Dam will be located in the S $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, Township 10 North, Range 5 East of the 6th P.M. in Lancaster County.
 - d. Construction must begin by August 23, 2001.
 - e. Construction of the project must be completed by February 23, 2002.
 - f. Impoundment of water under A-17823 may be denied for the benefit of downstream appropriators requiring water for direct irrigation and for senior rights.
 - g. A portion of the reservoir inflows may be required to be released for livestock.
 - h. The structure is to be constructed, operated and maintained in accordance with Nebraska Statutes, specifically §§ 46-241, 46-277 and 46-278.
 - i. Owners of reservoirs and dams are liable for all damages arising from leakage, overflow, or structural failure.

3. Application A-17824 and plan number P-15798 are hereby APPROVED subject to the following limitations, conditions and notice:
 - a. The source of water is a tributary to the South Branch of Middle Creek.
 - b. The priority date is March 16, 2000.
 - c. The capacity of Diamond Head Ranch Lower Reservoir is 14.2 AF. The amount of this appropriation shall include a one-time filling of the dead pool in the amount of 1 AF, plus multiple fills not to exceed 105.2 AF per annum. Diamond Head Ranch Lower Dam will be located in the SE¼NW¼ of Section 19, Township 10 North, Range 5 East of the 6th P.M. in Lancaster County.
 - d. Construction must begin by August 23, 2001.
 - e. Construction of the project must be completed by February 23, 2002.
 - f. Impoundment of water under A-17824 may be denied for the benefit of downstream appropriators requiring water for direct irrigation and for senior rights.
 - g. A portion of the reservoir inflows may be required to be released for livestock.
 - h. The structure is to be constructed, operated and maintained in accordance with Nebraska Statutes, specifically §§ 46-241, 46-277 and 46-278.
 - i. Owners of reservoirs and dams are liable for all damages arising from leakage, overflow, or structural failure.
4. Application A-17825 is hereby APPROVED subject to the following limitations, conditions and notice:
 - a. The source of water is a tributary to the South Branch of Middle Creek.
 - b. The water shall be used for irrigation purposes.
 - c. The priority date is March 16, 2000.
 - d. Construction of the diversion works must begin by August 23, 2001. The Applicant must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.
 - e. Construction of the project must be completed by February 23, 2002.
 - f. The amount of water shall be limited to one-seventieth (1/70) of a cubic foot per second for each acre of land irrigated by September 1, 2004.

- g. Map No. 15799 is APPROVED, which shows the following described lands proposed for irrigation under A-17825:

Township 10 North, Range 5 East
Lancaster County Acres

Section 18: NW¼SE¼	7
SW¼SE¼	10
Section 19: NW¼NW¼	20
NE¼NW¼	21
SW¼NW¼	19
SE¼NW¼	<u>21</u>
TOTAL	98

The appropriation of water shall not exceed 1.4 cfs (628 gallons per minute) measured at the point of diversion on the tributary to the South Branch of Middle Creek in the SE¼NW¼ of Section 19, Township 10 North, Range 5 East of the 6th P.M.; nor exceed a total annual volume of 105.2 AF; nor exceed the least amount of water necessary for the irrigation of a golf course.

- h. Use of water under A-17825 may be denied in order of priority when water supplies do not meet the demands of downstream appropriators.
5. Application A-17826 is hereby APPROVED subject to the following limitations, conditions and notice:
- a. The source of water is Diamond Head Ranch Upper Reservoir (A-17823).
 - b. The water shall be used for irrigation purposes.
 - c. The priority date is March 16, 2000.
 - d. Construction of the diversion works must begin by August 23, 2001. The Applicant must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.
 - e. Construction of the project must be completed by February 23, 2002.
 - f. This appropriation shall be limited to the lands irrigated and the amount of water beneficially used on an annual basis by September 1, 2004.

The appropriation of water allowed under A-17826 and A-17827 shall not exceed a combined maximum of 105.2 AF per annum. This volume shall be measured at the location of diversion from Diamond Head Ranch Lower Reservoir in the SE¼NW¼ of Section 19, Township 10 North, Range 5 East of the 6th P.M. and shall not exceed the least amount of water necessary for the irrigation of the golf course.

- g. Map No. 15800 is APPROVED for the same lands proposed for irrigation under A-17825 as described in paragraph 4g of this section.
 - h. Use of water under A-17826 may be denied in order of priority when water supplies do not meet the demands of downstream appropriators.
6. Application A-17827 is hereby APPROVED subject to the following limitations, conditions and notice:
- a. The source of water is Diamond Head Ranch Lower Reservoir (A-17824).
 - b. The water shall be used for irrigation purposes.
 - c. The priority date is March 16, 2000.
 - d. Construction of the diversion works must begin by August 23, 2001. The Applicant must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.
 - e. Construction of the project must be completed by February 23, 2002.
 - f. This appropriation shall be limited to the lands irrigated and the amount of water beneficially used on an annual basis by September 1, 2004.

The appropriation of water allowed under A-17826 and A-17827 shall not exceed a combined maximum of 105.2 AF per annum. This volume shall be measured at the location of diversion from Diamond Head Ranch Lower Reservoir in the SE¼NW¼ of Section 19, Township 10 North, Range 5 East of the 6th P.M. and shall not exceed the least amount of water necessary for the irrigation of the golf course.

- g. Map No. 15801 is APPROVED for the same lands proposed for irrigation under A-17825 as described in above paragraph 4g of this section.
 - h. Use of water under A-17827 may be denied in order of priority when water supplies do not meet the demands of downstream appropriators.
7. Water use reports for A-17823 through A-17827 may be required as provided by §§ 61-206 and 46-261.
8. The Applicant shall contact the Omaha District Corps of Engineers, P.O. Box 5, Omaha, Nebraska 68101 because federal permits may be required.

9. Prior to water being used under A-17823 through A-17827, a measuring device, which shows instantaneous discharge and the total volume pumped, must be installed at the point of diversion on the north bank of Diamond Head Ranch Lower Reservoir. The Department, in a prior separate action approving the Applicant's C-33 permit, required a measuring device at points approved by the Department which would provide data showing the amount of ground water discharged into and withdrawn from the stream under that permit. All sites shall be mutually agreed upon between Department staff and the Applicant.
10. Failure to comply with the provisions of any of these Approvals may cause cancellation of part or all of these appropriations. If unable to meet the conditions of these approvals due to unavoidable and natural causes, a petition for an extension of time may be filed with the Department. Petitions must be filed prior to the expiration date stated in the Approvals and accompanied by a \$10 filing fee.

DEPARTMENT OF NATURAL RESOURCES


Roger K. Patterson, Director

February 23, 2001

A copy of this Order of Approval; copies of application Nos. A-17823, A-17824, A-17825, A-17826, and A-17827; Dam Construction Certification forms; copies of approved drawings numbers P-15797 and P-15798; and copies of map numbers 15799, 15800 and 15801 were mailed on February 21, 2001, to Diamond Head Ranch Golf Club LLC, c/o Trent Anderson, 900 NW 140th Street, Lincoln, Nebraska 68528. A copy of this Order of Approval was also mailed to Terry and Carol Klug, 1446 Holdrege Road, Pleasant Dale, Nebraska 68423.

GARY LACEY
LANCASTER COUNTY ATTORNEY
555 South 10th Street
Lincoln, Nebraska 68508-2866
MAILING ADDRESS

402.441.7321/CHILD SUPPORT 402.441.7664/TELECOPIER 402.441.7336

July 27, 1999

John Bradley
Planning Director
555 South 10th Street
Lincoln, NE 68508

Dear John:

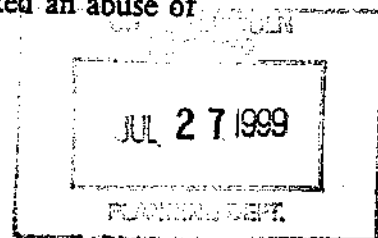
You have forwarded two questions from a member of the Planning Commission. The first question is whether the Planning Commission may deny a special permit for a golf course based upon the Commission's determination that the irrigation wells for the golf course would cause ground water quality and/or quantity problems for existing domestic wells. Pursuant to Article 4, section 4.007(b) of the Lancaster County Zoning Resolution, golf courses or recreational facilities are allowed in the Agricultural Zoning District only by special permit. The special permit process is set forth in Article 13. Section 13.001 states in part:

Before the issuance of any special permit . . . the County Board shall refer the proposed application to the . . . Planning Commission . . . to make a report regarding the effect of such proposed building or use upon the character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the public health, public safety and general welfare. . . .

County zoning regulations are intended to promote the health, safety and welfare of the community. Where an applicant has complied with all requirements of the special permit process, a denial of a special permit should be based upon a finding that granting the permit would effect the health, safety and welfare of the community.

An applicant for a special permit is not entitled to a special permit as a matter of right. *Crane v. Board of County Commissioners of Sarpy County*, 175 Neb. 568, 122 N.W.2d 520 (1963). In *Crane*, a special permit was requested to construct and operate a trailer court. The applicant complied with all applicable health and sanitation regulations but was still denied the special permit. The Court held that in order to reverse the denial of the special permit, the applicant would have to show that the denial constituted an abuse of

Office Headquarters
Old Federal Building, Second Floor
9th and P Street Entrance
Lincoln, Nebraska



John Colborn, Chief Deputy/Mike Thew, Chief, Civil Division/Linda Porter, Chief, Juvenile Division

July 27, 1999

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discretion has been clearly shown, it is not the province of the court to interfere." *Id.*, at 524. It should be noted that in *Crane* the applicant was attempting to extend the boundaries of his trailer court which had been "grand fathered" as a nonconforming use. The proposed extension, which was the subject of the special permit, was located within a residential zoning district. The fact that the application was basically extending a nonconforming use appears to have influenced the Court's decision to uphold the denial of the special permit.

If the Planning Commission is presented with evidence that granting the special permit would result in problems to the neighboring water quality and/or quantity they may deny the special permit on those grounds as it relates to the health, safety and welfare of the community. This finding should be based upon testimony and other evidence received at the public hearing.

Your second question is whether the Planning Commission may condition the special permit upon requiring the applicant to remedy any future problem that a neighboring home owner might experience in regard to the quantity and/or quality of his/her water caused by the irrigation wells of the golf course. We are unaware of any case law addressing the issue of whether special permits may include a condition of this nature. The condition you suggest would be difficult to administer and/or enforce since it would require the applicant to enter into agreements with all neighboring land owners. Even if this occurred, it may be difficult to prove exactly what caused the damage to the domestic well water. Also, should the corporation dissolve or breach the contract, the landowner would look to the County to remedy the situation since the County approved the special permit subject to the condition. Therefore, we would not recommend placing this type of condition upon the special permit.

Yours truly,

GARY E. LACEY
County Attorney

Diane M. Staab

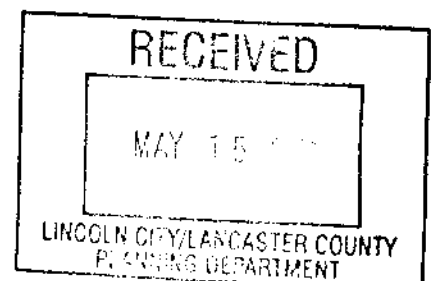
Diane M. Staab
Deputy County Attorney

cc: Mike Rierden


TO: Mike Dekalb, Planning
From: Dale Stertz, Building and Safety
Date: May 15, 2001
Subject: Diamond Head Golf Course, County S.P.186

The following comments address the Special Permit for Flood Plain issues only.

1. Clearly specify the 100 year flood boundary as shown on the FEMA National Flood Insurance maps.
2. Clearly show existing and proposed grading elevations with contour lines using 1988 NAVD Datum.
3. No development or grading is permitted in the 100 year flood boundary, unless the applicant can demonstrate (in writing) that the existing, proposed, and any future development will not increase the Base Flood Elevation(B.F.E) more than 1 foot at any location.
4. Provide documentation (in writing) on the downstream effects on other properties, with respect to a 100 year flooding event.
5. Any relocation of the 100 year flood boundary will require a Letter of Map Revision through FEMA.



MEMORANDUM

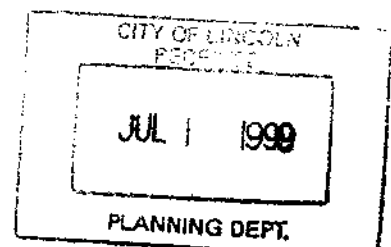
TO: Mike Dekalb, Planning
FROM:  Dale Stertz, Building and Safety
DATE: July 1, 1999
SUBJECT: Diamond Head Golf Course; County S.P. 169

We offer the following comments for subject Special Permit regarding Flood Plain issues only.

1. Clearly outline 100 year flood boundary as shown on FEMA National Flood Insurance maps.
2. Clearly show existing and proposed grading with elevations shown on contour lines.
3. No development or grading within the 100 year flood boundary is permitted unless the applicant can demonstrate (in writing) their development combined with all other existing and anticipated development will not increase the water surface elevation of the 100 year Flood Plain more than one foot at any location.
4. Provide documentation in writing, as to what effect this development may have on other properties down stream with respect to 100 year flood elevation changes.
5. Any relocation of the 100 year flood boundaries will require an official Letter of Map Revision through FEMA.

cc: Mike Merwick, Director
Chuck Zimmerman, Manager
Mel Goddard, Chief Building Inspector
File

jaj/wp/winmac/dale.memo.7199



LOWER PLATTE SOUTH
NATURAL RESOURCES DISTRICT



3125 Portia St., Box 83581, Lincoln NE 68501-3581
(402) 476-2729 • FAX (402) 476-6454
www.lpsnrd.org

Memorandum

Date: May 11, 2001
To: Mike DeKalb, Planning Dept.
From: J.B. Dixon, Stormwater Specialist, Lower Platte South Natural Resources District
Subject: County SP#186 Diamond Head Ranch LLC

We have reviewed the plans of the project above, and have no comments at this time. We look forward to working with the developers and engineers in the Erosion and Sediment Control Plan process.

If you have any questions, feel free to call.

A handwritten signature in black ink, appearing to be 'JBD' with a stylized flourish.

JBD/jbd

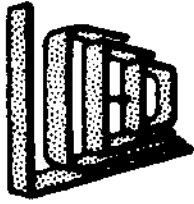
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Memo

To: Mike DeKalb
From: Rodger Harris, Building & Safety Dept.
Date: June 29, 1999
Subject: Diamond Head Golf Course, Co. S.P. 169
NW 140th & W. Holdrege St. area

We have reviewed the above referenced special permit for a recreation use, and have the following comments to offer:

1. The plan should show dimensioned building envelopes for the clubhouse and maintenance facilities.
2. Any existing buildings must conform to applicable building and life safety codes for any proposed uses and occupancies.



Lancaster


County

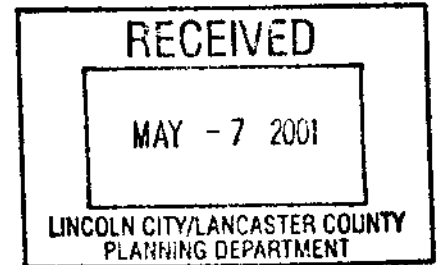
Engineering

Department

DON R. THOMAS - COUNTY ENGINEER

DEPUTY- LARRY V. WORRELL
COUNTY SURVEYOR

DATE: May 4, 2001
TO: Mike DeKalb
Planning Department
FROM: Larry V. Worrell 
County Surveyor
SUBJECT: COUNTY SPECIAL PERMIT #186
DIAMOND HEAD RANCH GOLF CLUB



Upon review, this office has not had any major discussions concerning this proposal, other than two random contacts.

This office would require the applicant to do the following:

- 1) Acquire 50' right-of-way along West Holdrege Street from NW 126th St. to NW 140th St. on both sides.
- 2) Prepare Engineering Design Plans for grading and paving of West Holdrege St. and NW 140th St. and submit for approval by this office.
- 3) Applicant shall be responsible for reconstruction and paving of West Holdrege St. from NW 126th St. to NW 140th St. and NW 140th St. from West Holdrege St. to clubhouse entrance.
- 4) Golf cart tunnel design and associated costs to be responsibility of the applicant, and design to be submitted for approval to this office.
- 5) Any and all changes and/or improvements to NW 140th St. must also be coordinated for approvals with Seward County.
- 6) Access to West Holdrege St. shall be relinquished except for the maintenance facility drive. Access to NW 140th St. shall be relinquished except for the clubhouse drive.
- 7) All golf course improvements shall be outside the 50' right-of-way line.

LVW/rin
DOCS\LVWSPJ\186 Diamond Head.wpd

Memorandum

To: Mike DeKalb, Planning
From: Rachel Martin, Parks and Recreation
Date: May 3, 2001
Re: County Sp #186

Parks and Recreation Department staff have reviewed the above-referenced proposal and have the following comments:

- 1) Landscape plan for golf course does not stipulate size, quantities, and specific species to be planted.
- 2) If pine species are to be planted, Austrian Pine and Ponderosa Pine should not be included due to serious disease problems. Scotch Pine should only be planted if irrigated.

Please phone me at 441-7936 with any questions.

